IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16458 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GEETABEN JITENDRABHAI PATEL
Versus
THE CHIEF CONTROLLING AUTHORITY (REVENUE) AND OTHERS

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Appearance :
MR BALRAM D JAIN for Petitioner.
MS MD MEHTA, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 06/08/2007

ORAL JUDGMENT

1. Invoking Article 226 of the Constitution, the petitioner has called into question notice dated 17-2-2007 issued under Section 152 of the Land Revenue Code for recovery of deficit stamp duty by attachment of

property and order dated 30th June 2003 by which market value of the property in question and proper stamp duty were assessed under the provisions of Section 32 A of the Bombay Stamp Act, 1958 (for short "the Act"). It was revealed from record that the petitioner has sought to make an application for reference under the provisions of Section 32 B of the Act and that application was rejected by an order, which is not on record and which is stated to have not been served upon the petitioner.

2. By filing an affidavit of Deputy Collector, Stamp Duty Valuation Organization, Surat-2, it is stated on oath that notices were issued under the provisions of Rule 4 (2) of the Rules made under the Act and, thereafter, order dated 30th June 2003 was made for payment of deficit stamp duty and that order was also sent to the petitioner by Registered Post A.D. It is further stated that the petitioner had approached the Chief Controlling Revenue Authority through the Deputy Collector on 7-11-2003 for grant of relief of making deposit of 12.5% instead of 25% and the application therefor was rejected on the ground of delay on 16-5-2006. On the other hand, according to the petitioner, an application for reference was made by the petitioner on 10-11-2003 and before that, on 7-11-2003, vide Challan No.2380 full deposit of 25% of the deficit stamp duty was made. That fact is borne out by the copies of the Challan of the Government Treasury, which are annexed with the petition and the factum of deposit is confirmed by impugned notice dated 17-2-2007, in which also, demand is reduced by the deposit already made. Therefore, aforesaid affidavit-in-reply of respondent no.2 appears to have been drafted, signed and filed without full application of mind and without verification of the relevant facts.

3. In view of above state of affairs and in view of the deposit already made by the petitioner and accepted by the respondent, for the purpose

of entertaining the application for reference made by the petitioner, it was fairly stated and conceded by learned AGP that the Authority should have no objection to considering the reference at the instance of the petitioner on merits and in disposing the same in accordance with law, after affording to the petitioner an opportunity of being heard. Therefore, the petition is partly allowed with the direction that the Deputy Collector concerned shall make a statement of the case and refer the same to the Chief Controlling Revenue Authority under the provisions of Section 32 B of the Act, if he has not already done so, and such reference shall be considered, heard and disposed in accordance with law, after affording to the petitioner an opportunity of being heard. In view of lapse of time, such proceeding shall be conducted and concluded as expeditiously as practicable. Notice dated 17-2-2007 under Section 152 of the Land Revenue Code for recovery of deficit stamp duty shall stand quashed. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(D.H.Waghela, J.)

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